



February 25, 2011

Via ECFs
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Media and Wireless Telecommunications Bureaus Seek Comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age for a New Auction Preference for Overcoming Disadvantage***
Reply Comments
GN Docket No. 10-244

Dear Ms. Dortch:

Western WiMAX, LLC submits these Reply Comments in response to the above-captioned Public Notice to urge the Federal Communications Commission ("FCC") to consider adopting a preference program in its competitive bidding processes based on the existing federal standards for service disabled veteran-owned small businesses (SDVOSB).

The Public Notice seeks comment on a proposal by the Advisory Committee on Diversity for Communications in the Digital Age to commence a notice of proposed rulemaking regarding a new preference program for the FCC's competitive bidding process for spectrum licenses. Persons or entities who have "overcome substantial disadvantage" would be eligible for a bidding credit in this new program. In its recommendations on the issue, the FCC Advisory Committee on Diversity for Communications in the Digital Age noted that

The criteria for evaluating applicants – which should be refined with input in the rulemaking process – would be designed to provide a preference to qualified applicants who (1) have experienced a disadvantage (2) that had a substantial negative impact on their entry into or advancement in the professional world or other comparable context and (3) that they have substantially overcome.

Western WiMAX provides fixed wireless broadband service in and around the Phoenix, Arizona market and supports the FCC's efforts to increase availability of, and access to, wireless spectrum. Our company has been in business for 10 years and was an early entrant in the marketplace for fixed wireless broadband services. We provide service to approximately 100 businesses and approximately 700 residential subscribers, using a combination of 18 GHz, 23

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GHz, 38 GHz and 3.65 GHz solutions, with both licensed and unlicensed components. Our business depends on providing reliable broadband (data), voice and video services to these customers and to fulfill their needs in delivering content of their choice quickly and dependably.

Western WiMAX proposes that the Commission offer a preference based on a category already recognized in federal procurement law: SDVOSBs. From personal experience, I can tell you that service-disabled veterans face unique and difficult challenges every day. I applaud the U.S. Government's efforts in recent years to establish a procurement program for small business concerns owned and controlled by service-disabled veterans. In this program, three percent of all government contracting must be made available to SDVOSBs.

Under Small Business Administration regulations, an SDVOSB is a business in which

- at least 51% of the business is owned by one or more service-disabled veterans (as identified in writing by the Veteran's Administration),
- the management and daily business are controlled by one or more SDVOSBs (or in some cases, their spouse or permanent caregiver) and
- the business is "small" for purposes of the Small Business Act and its implementing regulations.¹

The Advisory Committee already has recognized that "physical or emotional trauma suffered in connection with military service" would "likely qualify" an individual for a preference under their proposal.² Western WiMax proposes that the FCC use this existing definition in awarding preferences in competitive bidding for spectrum auctions, both in the interests of harmonizing the FCC's regulations with those of the SBA and in the interests of promoting concrete parameters for eligibility for such benefits.

Some may argue that it is difficult to define what it means to "overcome" "substantial disadvantage."³ Our proposal has the advantage of promoting concrete definitions that are already recognized in federal law. The Commission should implement these recommendations in any rules it adopts in this proceeding.

Sincerely,

/s/ Timothy Shea

Timothy Shea

Western WiMAX, LLC

¹ 13 C.F.R. §125.8.

² *Recommendation on Preference for Overcoming Disadvantage, FCC Advisory Committee on Diversity for Communications in the Digital Age* (October 14, 2010) at p.4

³ See, e.g., Comments of Verizon Wireless at 5-7.